

MEMO ENDORSED

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Via Facsimile

*The case has been transferred
to Judge Crotty*

SO ORDERED:

Date: 8/4/05

Richard M. Berman
Richard M. Berman, U.S.D.J.

August 4, 2005

Hon. Richard M. Berman
United States District Judge
United States Courthouse
40 Centre Street, Room 201
New York, New York 10007-1581

RE: *Empresa Generadora de Electricidad S.A. ("EGE") v. Corporación Dominicana de Empresas Eléctricas Estatales ("CDEE")*
No. 05 CV 5004 (RMB)

Dear Judge Berman:

We represent the plaintiff ITABO in the above-referenced matter. I am writing to inform the Court of developments in the arbitration that is the subject of the case before Your Honor, and to respond to the inquiry from your chambers.

The arbitration tribunal has now been fully constituted. It held its first conference with the parties on August 3, 2005, despite CDEE's disingenuous efforts to delay that from happening.

On July 26, 2005, Dr. Horacio Grigera Naón, the President of the tribunal proposed a conference – later scheduled for August 3 – to discuss ITABO's long-standing application to the tribunal for interim relief to prohibit CDEE from proceeding with litigation in the Dominican Republic. But on July 28, CDEE's attorneys tried to derail that conference.

CDEE wrote to Dr. Grigera Naón requesting that the conference be put off until after the conference with the Court that Your Honor had directed in the memorandum endorsement dated July 26, 2005. In its letter, CDEE argued that it did not have time to participate in the arbitral conference because, in essence, it had to prepare the two-page letter that it sent to Your Honor on August 2, 2005. It also argued that the Court's decision with respect to reargument might render the arbitral proceedings superfluous – in spite of this

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Court's bold-faced admonition that "ITABO's recourse is to pursue vigorously its claims in the arbitral tribunal." (July 18, 2005 Decision and Order, p.14). Copies of CDEEE's letter, and a translation thereof, accompany the instant letter. The tribunal, however, refused to reschedule its conference.

The arbitral conference in fact took place on August 3. Although the parties presented their positions concerning ITABO's application for interim relief, the tribunal focused primarily on the threshold issues of its jurisdiction over the parties and the dispute. The arbitrators are new to the case and have a good deal they must learn about the parties, their contracts and the issues in dispute. They directed the parties to make further submissions which should be completed this week, but gave no indication of when they would rule on ITABO's application for interim relief.

ITABO therefore continues to have an acute need for relief from this Court to protect the jurisdiction of the arbitrators by affording them sufficient time to become familiar with the issues before them and rule on ITABO's interim application.

In answer to the inquiry from your chambers, ITABO consents to the court disposing of its application for reconsideration or reargument on the basis of the papers submitted to date, including the recent letters from counsel. In this regard, we note that CDEEE's letter does not dispute, or even address, the central points in ITABO's reargument application: that the July 18 Decision and Order (a) erroneously stated (at p. 15) that ITABO would not "lose its arbitration rights even if it were to comply with some (future) Dominican court order," and (b) erroneously implied that a decision of a Dominican Court in one of the cases pending in the Dominican Republic could have preclusive effect with respect to the arbitration (at p. 16).

Respectfully submitted,

Grant Hanessian /sek

Grant Hanessian

encl.

cc: Steven Gerber, Esq. (Via Facsimile)
Hugo Chaviano, Esq. (Via Facsimile)

Hon. Richard M. Berman
August 4, 2005
NYCDMS/444094.2

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I, Mark Freehill, United States Federal Court Interpreter No. 20293, duly certified by the United States Government's Federal Court Interpreter Program, a United States citizen, of legal age, married, translator/interpreter by profession, bearer of Dominican Personal Identification Card (*Cédula*) No. 001-1486708-6, resident in Santo Domingo, Dominican Republic, domiciled at Calle 5, No. 12, Residencial Santo Domingo, in this city, HEREBY CERTIFY AND BEAR WITNESS that the following is a true and accurate version in the English language of a document presented to me in the Spanish language:

Jottin Cury**ABOGADO**

28 July 2005

By facsimile and mail

Dr. Horacio A. Gigrera (*sic*) Naón
President of the Arbitration Tribunal

Re: ICC Arbitration 13708/CC0: Empresa Generadora de Electricidad ITABO, S.A. vs. 1. Corporación Dominicana de Empresas Eléctricas Estatales; 2. Patrimonial Fund of the Reformed Enterprises/Patrimonial for Development (Patrimonial de las Empresas Reformadas/Fondo Patrimonial para el Desarrollo)

Honorable Mr. President:

CDEEE, with respect to the proposal of doing a telephone conference among the parties, requested by ITABO to discuss the cautionary measures it has sued for before this Arbitration Tribunal, and that are similar to those that were rejected by the Judge Richard M. Berman of New York, in his decision of 18 July 2005, expresses the following:

By instance dated 26 July 2005, ITABO has requested from judge Richard M. Berman the reconsideration of his decision of 18 July 2005, which rejected the suit which pursued an order of restriction in order for CDEEE to not continue litigating against ITABO in the Dominican courts.

The attorneys of CDEEE will be obliged in the next days to spend time on the study of that appeal of ITABO and must travel

next week to the city of New York to coordinate with the United States attorneys of CDEEE the defense of the latter in said appeal.

These circumstances oblige CDEEE to respectfully request that the holding of a telephone conference requested by ITABO be postponed to a date later than the holding of the hearing in which the appeal of the latter against the decision of Judge Richard M. Berman will be considered.

The requested postponement is necessary, not only due to the need of the attorneys of CDEEE to study and prepare the arguments they will raise against the allegations of ITABO with respect to the provisional measures requested from the Arbitration Tribunal which you preside, a task rendered difficult by the urgent need that has presented itself to respond to the points of the appeal by ITABO itself before the Judge of New York, but also because the final decision adopted with respect to said appeal, will have capital significance on the suit on cautionary measures which ITABO filed before the Arbitration Tribunal.

Specifically, and under the reservations of motivating and developing in due time the concepts we express below, it is evident that if the decision in New York, subject to the appeal, were to be revoked, and the suit of ITABO were to be finally accepted, the suit for cautionary measures filed before the Arbitration Tribunal would lose its purpose and there would be no need to hold the proposed telephone conference.

On the other hand, if said decision were to remain in effect, which would imply the right of appeal to the benefit of ITABO, we would have to consider presenting before the Arbitration Tribunal an exception of litispendencia due to the existence of two identical actions filed by ITABO before two different jurisdictions.

Sincerely,

[signature]

Milivo Coiscou, Esq.

For himself and for Dr. Julio Cury and
Jottin Cury hijo, Esq.

cc. Mr. Cristián Conejero Roos/José Ricardo Feris
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MFCS / August 05 / ITABO.JottinCury 28julo2005.English.cer

MADE AND SIGNED in Santa Domingo, Dominican Republic, this first (1st) day of the month of August of the year two thousand and five (2005).


Mark Fitchill
U.S. Certified Federal Court Interpreter No. 28293

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28 de julio de 2005

Por facsimil y correo

Dr. Horacio A. Grigera Naón
 Presidente del Tribunal Arbitral

Ref. Arbitraje ICC 13708/CCO; Empresa Generadora de
 Electricidad ITABO, S.A. (República Dominicana) vs/
 Corporación Dominicana de Empresas Estatales (República
 Dominicana) 2. Fondo Patrimonial de las Empresas
 Reformadas/Fondo Patrimonial para el Desarrollo (República
 Dominicana)

Honorable Sr. Presidente:

CDEEE, con relación a la propuesta de realización de una
 conferencia telefónica entre las partes, solicitada por ITABO
 para tratar de las medidas cautelares que ha demandado ante ese
 Tribunal Arbitral, y que son similares a las que fueron
 rechazadas por el Juez de New York Richard M. Berman, en su
 decisión del 18 de julio del 2005, expone lo siguiente:

Por instancia de fecha 26 de julio de 2005, ITABO ha
 solicitado al juez Richard M. Berman la reconsideración de su
 decisión del 18 de julio de 2005, que rechazó la demanda que
 perseguía una orden de restricción para que CDEEE no continuara
 litigando contra ITABO en los tribunales dominicanos.

Los abogados de CDEEE se verán obligados en los próximos
 días a dedicarle tiempo al estudio de ese recurso de
 reconsideración de ITABO y deberán viajar la próxima semana a la

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ciudad de New York para coordinar con los abogados norteamericanos de CDEEE la defensa de esta última en dicho recurso de reconsideración.

Esas circunstancias obligan a CDEEE a solicitar respetuosamente que se posponga la celebración de la conferencia telefónica solicitada por ITABO para una fecha posterior a la celebración de la audiencia en la que se conozca del recurso de reconsideración de esta última contra la decisión del Juez Richard M. Berman.

La posposición requerida es necesaria, no solamente por la necesidad que tienen los abogados de CDEEE de estudiar y preparar los argumentos que opondrán a las pretensiones de ITABO respecto de las medidas provisionales solicitadas al Tribunal Arbitral que Ud. preside, labor que se dificulta por la urgente necesidad que se presenta de atender los puntos del recurso de reconsideración de la propia ITABO ante el Juez de New York, sino también porque la decisión final que se adopte con relación a dicho recurso, tendrá una incidencia capital en la demanda sobre medidas cautelares que ITABO intenta por ante el Tribunal Arbitral.

Específicamente, y bajo reservas de motivar y desarrollar en su oportunidad los conceptos que expresamos a continuación, es evidente que de revocarse la decisión de New York, objeto del recurso de reconsideración, y aceptarse finalmente la demanda de ITABO, perdería su objeto la demanda de medidas cautelares incoada ante el Tribunal Arbitral y no habría ninguna necesidad de celebrar la conferencia telefónica propuesta.

Por otra parte, de mantenerse vigente dicha decisión, lo que supondría el derecho de apelación a favor de ITABO, habría que considerar proponer ante el Tribunal Arbitral una excepción de litispendencia por la existencia de dos acciones idénticas interpuestas por ITABO ante dos jurisdicciones diferentes.

Atentamente,



Lic. Mervio Corisco

Por sí y por el Dr. Julio Cury y el
Lic. Jettin Cury hijo

CC. Sr Cristian Conejero Raos/José Ricardo Ferris
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